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west virginia department of environmental protection

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Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Phone: (304) 926-0470  
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Earl Ray Tomblin, Governor  
Randy C. Huffman, Cabinet Secretary  
[www.dep.wv.gov](http://www.dep.wv.gov)

**CONSENT ORDER  
ISSUED UNDER THE  
HAZARDOUS WASTE MANAGEMENT ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 18  
AND THE  
GROUNDWATER PROTECTION ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12**

TO: Axiall Corporation  
J. Thomas Horan  
P.O. Box 191  
New Martinsville, WV 26155

DATE: April 27, 2015

ORDER NO.: MM-15-11

**INTRODUCTION**

This Consent Order is issued by the Director of the Division of Water and Waste Management (hereinafter "Director"), under the authority of West Virginia Code, Chapter 22, Article 18, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. to Axiall Corporation (hereinafter "Axiall").

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. Axiall operates a manufacturing and international marketing facility for chemical product lines (chlorovinyls and aromatics). Axiall Corporation is located in New Martinsville, Marshall County, West Virginia and has been assigned EPA ID No. WVD004336343.
2. On July 22, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel conducted an inspection of the facility. During the inspection, violations of the following sections of the Code of Federal Regulations, WV State Code, and WV Legislative Rule were observed and documented. These violations included, but are not limited to, the following:

Promoting a healthy environment.

- a. 40CFR262.34(c)(1)- Axiall failed to operate a satellite accumulation area at or near the point of generation at the laboratory building.
- b. 40CFR262.11- Axiall failed to perform a waste determination for a drum located in the STB Building, a large box containing aerosols awaiting puncturing, and partially filled paint cans in the trash container at the paint shop.
- c. 40CFR265.174 - Axiall failed to conduct weekly inspections for the Cal-Hypo drum storage area.
- d. 40CFR273.13(d)(2) – Axiall failed to immediately clean up and place in an appropriate container lamps that were broken.
- e. 40CFR273.13(a)(1) – Axiall failed to place in an appropriate container universal waste batteries that showed evidence of leakage, spillage, or damage.
- f. 40CFR273.15(b) – Axiall accumulated universal waste for longer than one (1) year from the date the universal waste was generated or received from another handler.
- g. 40CFR273.13(d)(1) – Axiall failed to place lamps in appropriate containers.
- h. 40CFR279.22(c)(1) – Axiall failed to mark containers and aboveground tanks used to store oil with the words “Used Oil.”
- i. 40CFR265.173(b) - Axiall opened, handled, or stored a container holding hazardous waste in a manner that may have ruptured the container or caused the container to leak.
- j. 40CFR262.34(a)(3) – Axiall failed to label each container and tank with the words “Hazardous Waste.”
- k. 40CFR262.34(a)(2) – Axiall failed to mark on each container the date upon which each period of accumulation began.
- l. 47CSR58 Section 4.3.a – Axiall failed to design, construct, and operate new areas used for storage or disposal of raw materials, products, or wastes to prevent release of contaminants to the groundwater.
- m. 40CFR27.15(c) – Axiall failed to demonstrate the length of time that universal waste had been accumulated from the date it became a waste or was received.
- n. 40CFR273.13(a) – Axiall failed to manage universal waste batteries in a manner that prevented releases of any universal waste to the environment.
- o. 40CFR273.14(a) – Axiall failed to mark universal waste batteries or the containers in which the batteries were contained with the appropriate label.
- p. 40CFR265.15(d) – Axiall failed to maintain records of the date and time of inspections, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.
- q. 22-18-8(a) – Axiall owned, constructed, modified, operated, or closed a facility for the treatment, storage, or disposal of hazardous waste without first obtaining a permit.

As a result of the aforementioned violations, a Notice of Violation (NOV) was issued to Axiall.

3. On April 9, 2015, WVDEP personnel and representatives of Axiall met to discuss the terms and conditions of this Order.

**ORDER FOR COMPLIANCE**

Now, therefore, in accordance with Chapter 22, Article 18, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

1. Axiall shall immediately take all measures to initiate compliance with all pertinent laws and rules.
2. Within thirty (30) days of the effective date of this Order, Axiall shall submit for approval a proposed plan of corrective action and schedule, outlining action items and completion dates for how and when Axiall will achieve compliance with all pertinent laws and rules. The plan of corrective action shall make reference to EPA ID No. WVD004336343 and Order No. MM-15-11. The plan of corrective action shall be submitted to:

**WVDEP Environmental Inspector Supervisor  
NW Regional Environmental Enforcement Office  
131 A Peninsula Street  
Wheeling, WV 26003**

A copy of this plan shall be submitted to:

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WVDEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

3. Because of Axiall's Code of Federal Regulations violations, Axiall shall be assessed a civil administrative penalty of five thousand eight hundred sixty dollars (\$5,860) to be paid to the West Virginia Department of Environmental Protection for deposit in the Hazardous Waste Management Fund within thirty (30) days of the effective date of this Order. Payments made pursuant to this paragraph are not tax-deductible for purposes of State or federal law. **Payment shall include a reference to the Order No. and shall be mailed to:**

**Chief Inspector  
Environmental Enforcement - Mail Code #031328  
WV-DEP  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304**

### **OTHER PROVISIONS**

1. Axiall hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 18, Section 20 and and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia. Under this Order, Axiall agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Axiall does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Axiall other than proceedings, administrative or civil, to enforce this Order.
2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.
3. If any event occurs which causes delay in the achievement of the requirements of this Order, Axiall shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Axiall becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Axiall shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Axiall intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Axiall (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.
4. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Axiall of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Axiall to additional penalties and injunctive relief in accordance with the applicable law.
5. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.
6. This Order is binding on Axiall, its successors and assigns.

7. This Order shall terminate upon Axiall's notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

*J. Thomas Horan*

J. Thomas Horan  
Axiall Corporation

*5/15/15*

Date

Public Notice begin:

Date

Public Notice end:

Date

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Scott G. Mandirola, Director  
Division of Water and Waste Management

\_\_\_\_\_  
Date

*revised June 2013*

**RECEIVED**

MAY 18 2015

ENVIRONMENTAL  
ENFORCEMENT

## Hazardous Waste Base Penalty Calculation (pursuant to 33CSR27-6.1)

**Responsible Party:** Axiall Corporation      **EPA ID Number:** WVD004336343

**Generator Classification:**      LQG

Enter FOF# and rate each finding as to Potential and Extent.

1)	Potential for Harm Factor	Factor Range	FOF#											
			2a	2b	2c									
a)	Harm to RCRA Program	1 to 3	1	2	1									
b)	Probability of Exposure	0 to 3	1	1	1									
c)	Potential Seriousness of Contamination	1 to 3	1	1	1									
<b>Average Potential for Harm Factor</b>			1	1.3	1	No								
2)	Extent of Deviation Factor	Factor Range												
	Degree of Non-Compliance	1 to 3	2	2	1									

**Potential for Harm Factors**

**1a. - Harm to the RCRA Program**

- All regulatory requirements are fundamental to the continued integrity of the RCRA Program
- Violations that undermine the statutory or regulatory purposes or procedures for implementing the RCRA program may have serious implications and merit substantial penalties. Examples include but are not limited to: failure to notify as a generator, failure to respond to an info request, failure to prepare or maintain a manifest, and operating / disposal without a permit

**1b. - Probability of Exposure - factors to be considered include but are not limited to: evidence of a release, evidence of waste mismanagement, and adequacy of provisions for detecting and preventing a release**

**1c. - Potential Seriousness of Contamination - factors to consider include but are not limited to quantity and toxicity of wastes (potentially) released, likelihood or fact of transport by way of environmental media (e.g. air and groundwater), and existence, size and proximity of receptor populations (e.g. local residents, fish, wildlife) and sensitive environmental media (e.g. surface waters and aquifers.)**

**Note:** Rate as 1 for Minor, 2 for Moderate and 3 for Major. Rate as 0 if it does not apply.





**Penalty Adjustment Factors**  
(pursuant to 33CSR27-6.2)

**Penalty Adjustment Factors**

6.2.b.1 - Good faith efforts to comply or lack of good faith - 10% decrease to 10% increase

6.2.b.2 - Degree of Willfulness and / or Negligence - 0% to 30% increase

6.2.b.3 - Cooperation with the Secretary - 0% to 10% decrease

6.2.b.4 - History of Non-Compliance - 0% to 100% increase -  
based upon review of last three (3) years - Warning = maximum of 5% each,  
N.O.V. = maximum of 10% each, previous Order = maximum of 25% each

6.2.b.5 - Ability to pay a civil administrative penalty - 0% to 100% decrease

6.2.b.6 - Economic Benefit of non-compliance

6.2.b.7 - Staff Investigative Costs

6.2.b.8 - Other relevant factors determined on a case-by-case basis

## Base Penalty Adjustments

(pursuant to 33CSR27-6.2)

Penalty Adjustment Factor	% Increase	% Decrease	Base Penalty Adjustments
6.2.b.1 - Good Faith - Increase			\$0
6.2.b.1 - Good Faith - Decrease			\$0
6.2.b.2 - Willfulness and/or negligence			\$0
6.2.b.3 - Cooperation with the Secretary			\$0
6.2.b.4 - Compliance/noncompliance history			\$0
6.2.b.5 - Ability to Pay an Administrative Penalty			\$0
6.2.b.6 - Economic Benefit (flat monetary increase)	\$0		\$0
6.2.b.7 - Staff Investigative Costs (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Increase (flat monetary increase)			\$0
6.2.b.8 - Additional Other Factors - Decrease (flat monetary decrease)			\$0
Public Notice Cost (flat monetary increase)	\$30		\$30
<b>Penalty Adjustments</b>			<b>\$30</b>
<b>Penalty =</b>			<b>\$5,860</b>

Estimated Economic Benefit Item	Estimated Benefit (\$)
Monitoring & Reporting	
Installation & Maintenance of Pollution Control Equipment	
O&M expenses and cost of equipment/materials needed for compliance	
Permit Application or Modification	
Competitive Advantage	
<b>Estimated Economic Benefit</b>	<b>\$0</b>
<b>Comments:</b>	